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6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**

8 WEBSITE MANAGEMENT SYSTEMS,  
LLC, a Nevada Limited Liability  
9 Company

Case No.: 2:20-cv-00213

10 Plaintiff,

11 v.

**PLAINTIFF'S MOTION FOR LEAVE TO  
FILE UNDER SEAL PROPRIETARY AND  
CONFIDENTIAL DOCUMENTS IN  
SUPPORT OF MOTION FOR  
PRELIMINARY INJUNCTION**

12 BENJAMIN DAILEDIA, an individual  
residing in Nevada, MELVIN OMAN, an  
13 individual residing in Nevada, DEVAN  
HIRST, an individual residing in Nevada,  
14 YES WE WILL, INC., a Nevada  
Corporation, and DOES 1-X,

15 Defendants.  
16  
17

18 Pursuant to LR-IA 10-5, Plaintiff Website Management Systems, LLC ("WMS"), by and  
19 through its counsel, hereby moves this Court for leave to file certain confidential and proprietary  
20 documents under seal. The documents to be filed under seal are Exhibits B-F of the Reply to  
21 Defendant's Opposition to Plaintiff's Motion for Preliminary Injunction (Dkt. No. 13). Exhibits  
22 B-F comprise Plaintiff's trade secrets.

23 The Exhibits are lodged under seal for review by this Court in association with the Reply  
24 and each of the Exhibits is designated CONFIDENTIAL – ATTORNEYS EYES ONLY for the  
25 purpose of (i) maintaining the trade secret status of the documents and (ii) conforming to the  
26 terms of Rule 26(c) Protective Order which Plaintiff expects to file and approved in this action.  
27 Despite no protective order being in place yet, LR-IA 10-5 allows the Court to seal documents.

## MEMORANDUM OF POINTS AND AUTHORITIES

### 1. LEGAL ARGUMENT

The general presumption in favor of public access to court documents “does not mandate disclosure in all cases” *San Juan Mercury News, Inc., v. U.S. Dist. Court – Northern Dist. (San Jose)*, 187 F.3d 1096, 1102 (9<sup>th</sup> Cir. 1999). To overcome the general presumption of public access, a party must demonstrate that there is either “good cause” or “compelling reasons” to seal the documents at issue. *See Ctr. For Auto Safety*, 809 F.3d at 1096-97. The 9<sup>th</sup> Circuit has reiterated this principle, concluding that “compelling reasons” must be articulated to maintain the secrecy of the material attached to dispositive motions rather than the “good cause” showing requiring to seal documents filed in a non-dispositive motions. *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178-79 (9<sup>th</sup> Cir. 2006) (internal quotes omitted).

The “good cause” standard is taken from Fed. R. Civ. P. 26(c)(1), which governs the issuance of protective orders in the discovery process: “The court may, for good cause, issue an order to protect any party or person from annoyance, embarrassment, oppression, or undue burden or expense...” Fed. R. Civ. P. 26(c)(1); see also *Ctr. For Auto Safety*, 809 F.3d at 1097.

On the other hand, “compelling reasons” exist when the court files might become a vehicle for improper purposes, such as use of records to “release...trade secrets.” *See Kamakana* 447 F.3d 1172, 1179 (citing *Nixon v. Warner Coom’s, Inc.*, 435 U.S. 589, at 598 (1978)). Exhibits B-F associated with the Reply (Dkt. No. 13) in this case are trade secrets of Plaintiff and their release would allow competitors to take immediate advantage of years of effort by the Plaintiff to develop the trade secrets in question. Indeed, Defendants are already doing so using the trade secrets they misappropriated from Plaintiff.

This Court also has the statutory authority to seal documents under Nevada’s Uniform Trade Secrets Act (“UTSA”). The USTA provides that “In any civil or criminal action, the court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include, without limitation:

...3. Sealing the records of the action...

Nev. Rev. Stat. § 600A.070.

In this instance, Exhibits B-F specifically detail Plaintiff's trade secrets as follows:

Exhibit B - Plaintiff's proprietary and confidential Lead Generation Process;

Exhibit C - Plaintiffs' proprietary and confidential Fulfillment and Search Engine Optimization Process; and

Exhibits D-F - Screen shots of Plaintiff's proprietary and confidential Website Demo in comparison to the website Demo being used by Defendants.

Compelling reasons exist for maintaining the secrecy of the trade secret information set forth in Exhibits B-F. As set forth Plaintiff's Motion for Preliminary Injunction (Dkt. No. 8) and the Reply to Defendants' Opposition to Plaintiff's Motion for Preliminary Injunction (Dkt. No. 13), the information set forth in Exhibits B-F form the backbone of Plaintiff's business and has been developed over the past 12 years of operations by Plaintiff and meets the definition of trade secret.

Even assuming *arguendo*, that the information set forth in Exhibits B-F did not meet the technical definition of a trade secret, "compelling reasons" nevertheless exist whereby the documents to be sealed are "sources of business information that might harm a litigant's competitive standing" such that a sealing is warranted. *See, Nixon*, 435 U.S. at 598. The 9<sup>th</sup> Circuit has stated that "...a trade secret may consist of a compilation of data, public sources or a combination of proprietary and public sources." *United States v. Nosal* 676 F.3d 854 (9th Cir. 2012).

Accordingly, under the standards set forth in *Kamakana*, as well as under NRS § 600A.070, this Court should preserve the secrecy and confidentiality of Exhibits B-F as these documents contain the trades secrets of Plaintiff which are at issue in this case. Thus, the exception to public disclosure of trade secret documents outweighs the general presumption of public access. *See Kamakana* 447 F.3d at 1179-81.

## II. CONCLUSION

Based on the foregoing points and authorities, Plaintiff respectfully requests that this Court enter an order granting Plaintiff's leave to file the following documents under seal:

Exhibit B to Reply - Plaintiff's proprietary and confidential Lead Generation Process;

Exhibit C to Reply - Plaintiffs' proprietary and confidential Fulfillment and Search Engine Optimization Process; and

Exhibits D-F to Reply - Screen shots of Plaintiff's proprietary and confidential Website Demo in comparison to the website Demo being used by Defendants.

DATED this 2<sup>nd</sup> day of March 2020.

Respectfully submitted,

**FISHERBROYLES, LLP**

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 2<sup>nd</sup> day of March 2020, a true and correct copy of  
**PLAINTIFF'S MOTION FOR LEAVE TO FILE UNDER SEAL PROPRIETARY AND  
CONFIDENTIAL DOCUMENTS IN SUPPORT OF MOTION FOR PRELIMINARY  
INJUNCTION** was served via The Court's ECF System as follows:

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